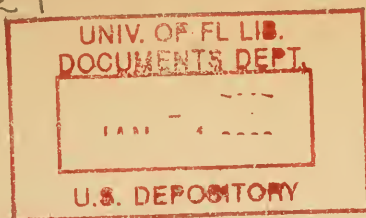


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**THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY**

DECISION NO. 27

IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

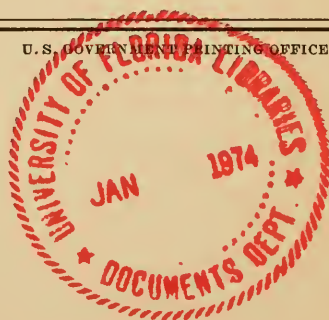
DOCKET NO. 277

*Pennsylvania Trust Company of Pittsburgh, Guardian of the Estate
of Charles Henry Salt, a minor, Claimant*

George L. Ellsworth, Attorney

CHANDLER P. ANDERSON
American Commissioner

U. S. GOVERNMENT PRINTING OFFICE: 1929



MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON

American Commissioner

(II)

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MIXED CLAIMS COMMISSION
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*Pennsylvania Trust Company of Pittsburgh, Guardian of the Estate
of Charles Henry Salt, a minor, Claimant*

George L. Ellsworth, Attorney

The above named claimant has duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid by it to the attorney, George L. Ellsworth, of Boston, Massachusetts, as compensation for whatever services have been rendered by him on behalf of and with the authority of its ward, Charles Henry Salt, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928."

It now appears that the Pennsylvania Trust Company of Pittsburgh, as the Pennsylvania Guardian of the said minor, on October 11, 1928, petitioned the Probate Court of Massachusetts relative to the filing of an account by Mr. Arthur F. McMahon, the Massachusetts Guardian of the said minor, who has received, on behalf of said minor, a check of the United States Treasury Department for \$18,593.98, representing the said minor's share of the award ren-

dered by this Commission on February 21, 1924, in the matter of the claim of George L. Ellsworth, Administrator of the Estate of Henry Jordan Salt, Deceased, Blanche Frances Salt, and Charles Henry Salt.

The attorney, in response to a request by the American Commissioner for information which he might desire to have considered in this fee-fixing proceeding as showing the reasonableness of the fee asked by him, has replied that the above petition of the Pennsylvania guardian to the Probate Court of Massachusetts "will necessarily and directly involve the character of my services and the fair value thereof rendered in behalf of said minor." He then adds:

It therefore seems to me unnecessary at this time to furnish you the detailed information requested, especially as my services and charges in connection with said estate cover a period beginning in 1915 inclusive of the services rendered the ward in connection with the proceedings before your Commission.

The interest of the minor, therefore, and the responsibility of the Massachusetts guardian are obviously in the jurisdiction of the State Court in which the above claimant has filed its petition and in view of the facts above stated it seems unnecessary at this time to furnish the detailed information requested in your letter.

A copy of the above reply was sent to the Pennsylvania Guardian and it has answered admitting that "it is true that the Massachusetts guardian must file his account in his own court, the court of his appointment, and it is in that court that an application has been made because of his unfaithfulness to his ward in not asking you to fix the fees of his attorney Ellsworth in the proceeding before you, in his not having given a new and adequate bond when he received over \$18,000.00 from the U. S. government in this case, and in squandering a part of the money and not having deposited the same subject to the counter signature of his bonding company." The Pennsylvania guardian also states:

There is now no conflict of jurisdiction between the Pennsylvania and the Massachusetts courts, nor between your jurisdiction and that of the Massachusetts Court. * * *

* * * one of the expenses of his [the Massachusetts guardian's] administration is the payment of a reasonable but ample fee to the attorney who conducted these proceedings before you. The amount of this fee the act of Congress has left to you to fix upon demand made by the interested party. When you fix and determine that fee, your finding is binding on the attorney, will be the amount the guardian will be justified in paying the attorney out of the ward's money in his hands, and of course the minor will have to be satisfied, having

made the request to you to fix that fee, and the Probate Court at Dedham will approve your finding in that matter. Your finding as to what is a reasonable fee will be conclusive on everybody concerned, will be *res adjudicata* as to that question, and will oust the jurisdiction of any other court to pass upon the matter within your jurisdiction. You are the proper and only forum to pass upon that matter when properly requested to do so.

Without entering into a discussion of the legal merits of the arguments of the claimant and attorney as above set forth, the American Commissioner is of the opinion that, by reason of the proceedings pending in the Probate Court of Massachusetts, it is evident that the attorney in this case will not be permitted to collect an excessive fee. The fee to be fixed in that proceeding for the attorney in this case will be for an amount approved by the Court, which must necessarily be regarded as a reasonable and satisfactory fee under the law of the State of Massachusetts, where the legal guardian who successfully prosecuted the claim of said minor before this Commission was appointed.

As held by the American Commissioner in a similar proceeding (Decision No. 26) the primary purpose of the fee-fixing provisions of the "Settlement of War Claims Act of 1928" was to prevent the collection of excessive fees by attorneys and to fix reasonable fees for them in cases of dispute. This purpose will be fully accomplished in this case by the proceedings instituted on behalf of the claimant and now pending in the Probate Court of Massachusetts and, inasmuch as the "Settlement of War Claims Act of 1928" merely authorizes and does not direct the American Commissioner to fix reasonable fees, it rests in his discretion to refuse to take such action when, as in this case, the result desired by Congress in enacting this legislation will be fully accomplished without his intervention.

In view of these considerations, and of the submission of this question to the Massachusetts Court by the voluntary act of the claimant's Pennsylvania guardian, the American Commissioner considers that it is not desirable or appropriate for him to undertake to fix the attorney's fee in this case.

Done at Washington, D. C., this 6th day of February, 1929.

CHANDLER P. ANDERSON,

American Commissioner,

Mixed Claims Commission,

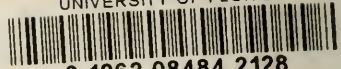
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